

OFFICE OF THE GENERAL COUNSEL

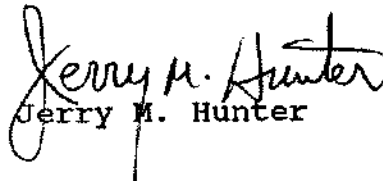
MEMORANDUM GC 93-10

September 27, 1993

TO: All Employees, Office of the General Counsel
FROM: Jerry M. Hunter, General Counsel
SUBJECT: Summary of Operations (Fiscal Year 1992)

Attached is a copy of the Summary of Operations for Fiscal Year 1992. As reflected in the summary, the staffs of the Office of the General Counsel deserve special recognition for their outstanding record of performance.

I wish to extend to you my sincere appreciation and congratulations for the excellent manner in which you contributed to the mission of the Agency.


Jerry M. Hunter

Attachment

cc: NLRBU

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MEMORANDUM GC 93-10

SUMMARY OF OPERATIONS
FISCAL YEAR 1992

INTRODUCTION

This summary is a continuation of the General Counsel's practice of providing an annual overview of the operations of the Office of the General Counsel.

The record of performance achieved by the staffs of the Headquarters and Regional Offices of the General Counsel in Fiscal Year 1992 continued to be outstanding. This high level of performance has been attained notwithstanding continued budgetary restraints.

I wish to take this opportunity to express my sincere appreciation to all staff members for their continued dedication and commitment to the work of this Agency. I also wish to express my gratitude to those who practice before us for the cooperation and assistance that they have extended to us in our efforts to effectively and efficiently administer the Act.


Jerry M. Hunter
General Counsel

ORGANIZATION OF THE OFFICE OF THE GENERAL COUNSEL

The Office of the General Counsel is composed of five major components or Divisions. These Divisions are responsible for the various casehandling, administrative and personnel functions of the office. The five Divisions are: The Division of Operations-Management and Regional Offices, the Division of Advice, the Division of Enforcement Litigation, the Division of Administration and the Office of Equal Employment Opportunity.

The Division of Operations-Management includes Headquarters and Regional Office staffs. The Headquarters staff has responsibility on behalf of the General Counsel for the operations of the Regional, Subregional and Resident Offices, and the coordination of the casehandling of those offices with the Washington Divisions of the Office of the General Counsel and the Board.

There are 33 Regional Offices, 2 Subregional Offices and 17 Resident Offices. Each Regional Office is headed by a Regional Director who is responsible for the management of the office and any attached Subregional or Resident Offices and for the investigation and initial determination of the merits of unfair labor practice cases and representation cases. The Regional Director is also responsible for processing requests for information under the Freedom of Information Act.

The Division of Advice has the function of rendering substantive legal advice to the General Counsel and to Regional Offices in cases which involve novel or complex issues, cases of national interest or cases which involve developing and changing areas of the law. The Division also processes requests for injunctive relief under Section 10(j) of the Act, litigates injunction cases in Federal appellate courts under Section 10(l) and 10(j) and indexes and classifies Board and Court decisions under the Act.

The Division of Enforcement Litigation is responsible for the Agency's litigation in the United States Court of Appeals, the Supreme Court of the United States and for contempt and miscellaneous litigation in Federal and State courts to protect the Agency's processes and functions. The Office of Appeals is a major component of the Division of Enforcement Litigation. This office reviews appeals from Regional Directors' refusals to issue complaint in unfair labor practice cases and recommends action to be taken thereon by the General Counsel. It also processes appeals from the Regional Directors' denials of FOIA requests.

The Division of Administration is under the general supervision of the General Counsel and has been delegated responsibility for the development, direction and coordination of administrative staff support functions for both the Board and the General Counsel.

The Office of Equal Employment Opportunity is under the direction of the Board and the General Counsel and is responsible for the development, monitoring and evaluation of the Agency's affirmative action program and the processing of internal complaints of discrimination.

General Information

The information set forth below reflects the work of the various Divisions during this past fiscal year (FY 92). These statistics are preliminary and based on actions taken during the year.

Regional Offices

Case Intake

The NLRB has no authority to initiate proceedings on its own. Its processes can be invoked only by the filing of a charge or a representation petition by a member of the public. Total case intake during FY 92 was 38,574 compared to 38,923 cases in the previous year, representing a 0.9 percent decrease in intake. Unfair labor practice case intake at 32,317 increased by 0.2 percent while representation case intake at 5,835 decreased by 6.2 percent. In other types of cases filed (UD, AC and UC), there was a decrease from the previous year's intake with the filing of 422 such cases compared to 429 cases.

Regional Professional Staff and Productivity

The average professional staff to handle the workload in the Regional Offices during FY 92 was 950 compared to 956 in FY 91. In the area of productivity [the measure of average monthly output per regional professional during the year], FY 92 output per field professional per month increased to 140.4 units compared to 136.3 units for FY 91. The productivity figure is affected by a number of factors including case intake, average professional staff, attrition and the settlement rate.

Information Officer Inquiries

The General Counsel's Public Information Program continued to successfully prevent a large number of nonmeritorious cases from being filed with the Agency and continued to provide assistance to members of the public by referring them to the appropriate agencies or organizations or by assisting them in filing charges with the NLRB, where appropriate. In FY 92, the total number of inquiries received through the Public Information Program was 221,655, an increase of 0.8 percent over the 219,821 inquiries received during FY 91. The rate of charge acceptance (percent of instances in which the contact results in a charge being filed) was 5.2 percent, as compared to 5.1 percent in FY 91. Since the inception of this program several years ago, the Agency has reduced its charge acceptance rate by 4 percent from 9.2 percent in 1980 to the current 5.2 percent rate. In terms of cases, this program in this year alone saved the Agency the cost and time of investigating approximately 9,000 no-merit cases.

Unfair Labor Practice Cases

Settlements

The Agency's effectiveness and efficiency in administering the Act is greatly enhanced by its ability to effect a voluntary resolution of meritorious unfair labor practice cases. Over the years, the Agency has had an excellent record in achieving this end. In FY 92, 9,445 settlements of unfair labor practice cases were obtained representing a rate of 94.3 percent as compared to 9,733 settlements in FY 91 and a rate of 93.2 percent.

Complaints

In FY 92, 2,899 complaints issued as compared to 3,208 in FY 91. The median time to issue complaints was 47 days, as compared to the median time of 46 days achieved in FY 91.

Merit Factor

The percentage of unfair labor practice cases in which a Regional Director determines that formal proceedings are warranted is called the merit factor. In FY 92 that factor was 33.4 percent compared to last year's merit factor of 36.1 percent. In general, over the years, the merit factor has fluctuated between 31 percent and 36 percent.

Litigation Results

The General Counsel won 86.3 percent of Board and Administrative Law Judge decisions in whole or in part in FY 92, an increase in the litigation success rate of 84.8 percent attained in FY 91. The litigation success rate is a factor which permits an assessment of the quality of Regional investigations and litigation.

Remedies

In FY 91, \$76,432,499 was distributed to employees as backpay, representing an 8.7 percent increase over FY 91 in which \$70,331,453 was distributed. The amount paid out to employees in FY 92 as reimbursement of fees, dues, and fines was \$507,054 and represents a significant percentage decrease when compared to the \$1,096,479 disbursed in FY 91. In addition, in FY 92, 3,903 employees were offered reinstatement, as compared to 3,954 in FY 91 which represents an 1.3 percent decrease.

Representation Cases

Elections

The Regions conducted 3,499 initial elections in FY 92 of which 84.4 percent were held pursuant to agreement of the parties, compared to 3,686 initial elections and an 86.1 percent election

agreement rate for FY 91. The median time to proceed to an election from the filing of a petition was 48.2 days, a slight decrease from the 48.5 day median in FY 91.

Regional Director Decisions

In FY 92, Regional Directors issued 697 decisions in contested representation cases after hearing in a median of 43 days, bettering the goal of 45 days. This compares with FY 91, when 680 decisions were issued in a median time of 44 days.

Representation and Union Deauthorization Hearings

In this category, 866 initial hearings were held in FY 92 as compared to 917 in FY 91. The number of hearings held each year has declined over the last several years since they have been directly affected by case intake and the increase in election agreements.

Division of Enforcement Litigation

Appellate Court Activity

Intake and Productivity In FY 92, the Appellate Court Branch was responsible for handling 283 cases, 165 of which were referred by the Regions for court enforcement and 118 cases in which petitions for review were filed by other parties. By filing briefs in 181 cases and securing compliance in another 101 cases, dispositions were made in 282 cases. In FY 91, total intake was 323 cases and dispositions totaled 264 cases. Oral arguments were presented in 149 cases in FY 92 compared with 164 cases in FY 91. The median time for filing applications for enforcement was 33 days in FY 92 compared with 29 days in FY 91. The median time for both enforcement and review cases, from the receipt of cases to the filing of briefs, was 144 days in FY 92 compared with 139 days for FY 91.

Litigation Results

In FY 92, 160 cases were decided by the United States Courts of Appeals compared with 178 cases in FY 91. Of these cases, 84.4 percent were won in whole or in part in FY 92 compared with an 86.1 percent success rate in FY 91. In FY 92, 5.0 percent were remanded entirely compared with 5.6 percent in FY 91. Also in FY 92, 10.6 percent were total losses, up from the 7.9 percent in FY 91.

Special Litigation Activity In FY 92, the Special Litigation Branch had an intake of 99 cases and closed 76 cases. This compares with an intake of 80 cases and the closing of 74 cases in FY 91. Additionally, in FY 92, the Branch filed 85 briefs: 22 appellate court briefs, 38 district court briefs and 25 bankruptcy court briefs. This compares to FY 91 when the Branch filed 82 briefs, 24 to the appellate courts, 29 to the district

courts and 29 to the bankruptcy courts. In FY 92, the Branch also participated in 27 oral arguments and received 36 decisions as follows: 1 bankruptcy decision-a loss, 18 district court decisions, winning 16 and losing 2, 17 appellate court decisions, winning 14, losing 2, and splitting the last.

Supreme Court Activity In FY 92, the Supreme Court decided one Board case, which the Board lost. In FY 91, the Supreme Court decided two Board cases, which the Board won. In addition, in FY 92, the Board participated as amicus in two cases in which petitions were denied. In FY 92, the Court denied 26 private party petitions for certiorari and granted none; no Board petitions were filed. In FY 91, the Court denied 23 private party petitions for certiorari and granted two; one Board petition was filed and granted.

Contempt Activity In FY 92, 107 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 77 cases in FY 91. Voluntary compliance was achieved in 23 cases during the fiscal year, without the necessity of filing a contempt petition, while in 25 others, it was determined that contempt was not warranted. During the same period, 20 civil contempt proceedings were instituted as compared to 21 civil proceedings in FY 91. These included three motions for the assessment of fines and writ of body attachment. In addition, one criminal contempt proceeding was initiated during the year.

Eighteen civil contempt or equivalent adjudications were awarded in favor of the Board, including three where the court ordered civil arrest and assessment of fines. Protective orders enjoining the dissipation of assets were obtained in two cases. During the fiscal year, the Contempt Litigation Branch collected \$355,379 in fines and \$1,114,996 in backpay, while recouping \$48,549 in court costs and attorneys' fees incurred in contempt litigation.

Appeals Activity In FY 92, the Office of Appeals received 3,618 appeals from Regional Directors' refusals to issue complaints, an increase of 44 from the 3,574 appeals received in FY 91. In FY 92, the office disposed of 3,637 appeals, a decrease of 9 from the 3,646 decided in FY 91. The percentage of reversals of Regional Directors' dismissals was 1.1 percent, a decrease from the 3.5 percent reversed in FY 91. Median time to process appeals in FY 92 was 7 days, a reduction of 3 days from the 10-day median attained in FY 91. The office also received 71 appeals under the Freedom of Information Act (FOIA), an increase of 5 appeals over the number received in FY 91. It disposed of 71 FOIA appeals during FY 92 compared to 66 FOIA appeals disposed of in FY 91.

The Division of Advice

During FY 92, the Advice Branch continued to timely process its cases. Thus, the median time for processing cases was 21 days, a reduction of 3 days from the 24-day median in FY 91. Also, during the year, the Branch received 966 cases and closed 943 cases. The median age of cases pending at the end of the fiscal year was 27 days, the same median age as the prior year.

Section 10(j) Injunction Activity

In FY 92, the Injunction Branch received 116 cases, as compared to the 142 cases received in the prior year. Section 10(j) relief was authorized in 26 cases, or 22 percent of the cases. In addition, the success rate, i.e., in these cases the Agency achieved either a satisfactory settlement or a substantial victory in litigation, for authorized 10(j) cases was 96 percent as compared to 90 percent the previous fiscal year.

Section 10(1) Injunctive Activity

The Regional Offices filed 40 petitions for 10(1) injunctions with the appropriate district courts in FY 92, a 13.0 percent decrease from the 46 petitions filed in FY 91.

Injunction Branch Litigation

During FY 92, the Injunction Branch handled 104 cases in addition to the requests for Section 10(j) authorization. These cases involved appeals from district court decisions in 10(j) or 10(1) cases, contempt of district court decrees, and litigation advice to Regions in their litigation of 10(j) or 10(1) cases. The Branch directly handled 5 appeals that were pending at the beginning of the fiscal year and 13 appeals that were filed during the year. The Branch also directly litigated 3 district court matters. Of these 21 cases, the Branch won 6 and satisfactorily resolved 6 others before decision and 9 were pending decision at the end of the fiscal year. In FY 92 of the 11 cases that resulted in court decisions, 7 were won and 4 were lost. The Branch also authorized the Regions to institute contempt proceedings in 15 cases during FY 92.

Date: September 1993